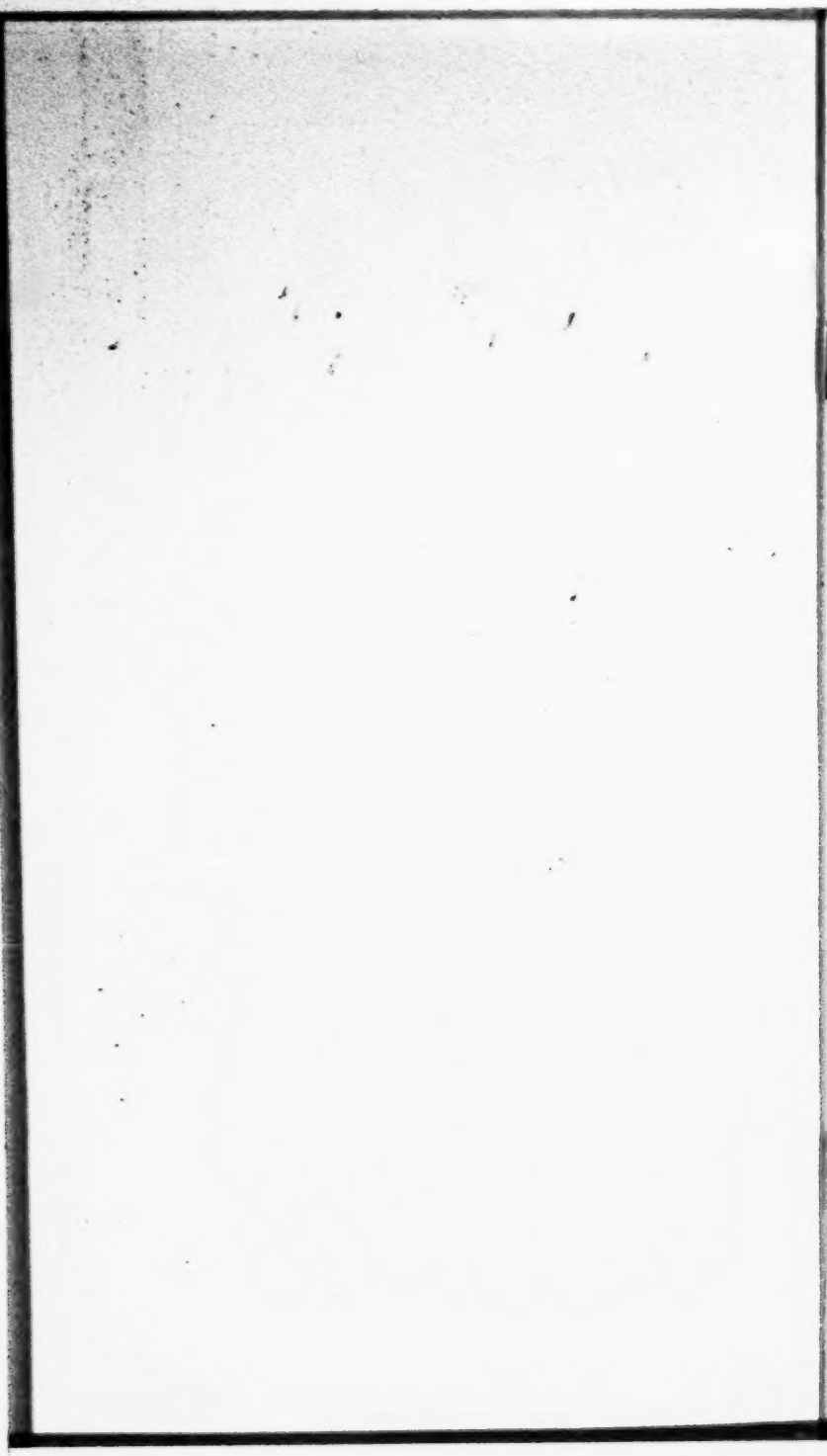


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IN THE

# Supreme Court of the United States

October Term, 1973

No. 73-419

ANTHONY BRIGANDI and DONALD BRIGANDI,
*Petitioners,*

*against*

THE PEOPLE OF THE STATE OF NEW YORK,
*Respondent.*

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**On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York**

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## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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ANTHONY BRIGANDI and DONALD BRIGANDI,
*Petitioners,*

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THE PEOPLE OF THE STATE OF NEW YORK,
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**On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York**

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

### Preliminary Statement

Petitioners Anthony Brigandi and Donald Brigandi seek a writ of certiorari to review a judgment of the Court of Appeals of the State of New York, rendered June 6, 1973, unanimously affirming their convictions of criminal possession of stolen property in the first degree [N.Y. Penal Law §165.50].

## Statement of the Case

In the afternoon of November 18, 1970, the petitioners, Anthony Brigandi and Donald Brigandi, were found to have in their possession, stolen Apollo XII commemorative medals bearing the name "Medallic Art Company." Thereafter, petitioners were arrested and indicted (1809-71) for two counts of criminal possession of stolen property in the first degree [N.Y. Penal Law §165.50] and for one count of criminal possession of stolen property in the second degree [N.Y. Penal Law 165.45]. Prior to trial the petitioners moved to suppress the introduction into evidence of the medallions seized on November 18, 1970 by Detectives Douglas Keables and Alfred Halikias. After a pre-trial suppression hearing the court denied the motion.

The trial commenced on January 19, 1972, and the petitioners were convicted of criminal possession of stolen property in the first degree [New York Penal Law §165.50]. Judgment was rendered on February 28, 1972, and Donald was sentenced to probation and Anthony was sentenced to a maximum of three years imprisonment and to pay a fine of $2000.

On appeal to the Supreme Court of the State of New York, Appellate Division, First Judicial Department, the petitioners argued that the evidence did not establish that they were guilty of criminal possession of stolen property beyond a reasonable doubt. Further, they argued that the police officers did not have reasonable cause to arrest them, that they did not consent to a seizure of medals by the detectives from their stores, that the police had ample time to obtain a search warrant, that the court's charge to jury

was improper, and that they were prejudiced by the court's denial of their request for a tape recording at the conclusion of the suppression hearing.

The Supreme Court rejected these contentions and unanimously affirmed petitioners' convictions on January 16, 1973.

On March 7, 1973, Chief Judge STANLEY H. FULD of the Court of Appeals of the State of New York granted petitioners' motion for leave to appeal to the Court of Appeals. On June 6, 1973, the Court of Appeals rejected petitioners' identical contentions as in the Supreme Court and unanimously affirmed their convictions.

In the instant petition, petitioners seek certiorari pursuant to 28 U.S.C. §1257 (3). In their petition they allege that the petitioners did not consent to a search by the police of their stores, that the court below misconstrued the doctrine of *Coolidge* v. *New Hampshire*, 400 U.S. 443 (1971) with respect to items in plain view, and that they were entitled to pretrial discovery of a tape recording.

## The Evidence at the Motion to Suppress

On June 18, 1970, Detectives **Douglas Keables** and **Alfred Halikias** of the Safe, Loft and Truck Squad were assigned to investigate a series of thefts of medallions from the Medallic Art Company. Keables, during the course of his investigation, conversed with Raymond Rivera, an employee of Medallic Art, and Larry Leaf, a private investigator hired by Medallic Art (Keables, A-93, 84, 96).*

* References are to the minutes of the hearing.

On November 18, 1970, Keables met Rivera and Leaf at West 43rd Street and Sixth Avenue in Manhattan (Keables, A-93).

At that time, Leaf told Keables "that Rivera had been stealing medals from the Medallic Art Company and had been selling them to the proprietors at the store" located at 103 West 45th Street (Keables, A-94, 116, 129-30, 136). Leaf also apprised Keables that Rivera was then wearing a "recording device" and that Rivera had been provided by Ray Ruete, an officer of the Medallic Art Company with a box of medallions (Exh. 9) which was similar to the medallions that Rivera had previously stolen and sold to the owners of the West 45th Street store (Keables, A-94, 130-31). Keables instructed Rivera "to do exactly what he did in the past to deal with the individual at that location" (Keables, A-94).

Shortly thereafter, the wired Rivera, carrying the box of medallions, entered the West 45th Street store, while Keables and Halikias waited outside (Keables, A-95, 134; Halikias, A-135, 138). Keables, from his position approximately twenty-five feet away, saw Rivera wait while two customers departed and then join Anthony Brigandi, Donald Brigandi and Robert Brigandi, Anthony's 19-year-old son, behind the counter (Keables, A-95, 97, 125, 128, 134; Halikias, A-136-37, 140). After a few minutes Rivera came to the front of the store, and Keables saw what appeared to be money being exchanged between Anthony and Rivera (Keables, A-95; Halikias, A-138).

Approximately five or ten minutes after Rivera emerged from the store, Detectives Keables and Halikias entered

(Keables, A-95-6, 117). Keables testified that prior to entering the store he did not listen to the conversation recorded by Rivera (Keables, A-114-15). Upon entering the store, Keables identified himself as a police officer (Keables, A-95-6). He noticed to the left of the entrance door a display case which contained an Apollo XIII medallion (Exh. I), a Dawn of America medallion (Exh. II); a Lincoln heritage medallion (Exh. III); and a George Roth of Pennsylvania medallion. The medallions were displayed in open boxes (Exhs. 2A, 3A) with the name Medallic Art Company imprinted on the side of the boxes (Keables, A-97, 100-2, 113). After identifying himself, Keables told Anthony Brigandi that he was investigating a loss of Medallic art medals which were similar to those displayed in the store's showcase (Keables, A-103). Brigandi stated that he had just purchased a box of the medallions, a few minutes earlier, from a Spanish male, and that he had bought medallions on other occasions from other unidentified individuals (Keables, A-104). Mr. Ruete, an officer of the Medallic Art Company, then appeared at the store and identified the medals in the showcase as belonging to the Medallic Art Company (Keables, A-104). Keables then placed Anthony and Donald Brigandi under arrest and gave them their "rights and warnings" (Keables, A-105). Halikias also advised the Brigandis of "their rights under *Miranda*" (Halikias, A-139). Halikias then asked Donald Brigandi, "If there were any other medals in this shop," and Donlad replied, "there may be one or two, or three pieces in the back" (Halikias, A-137). Donald then asked Halikias if he had a search warrant, and Halikias replied "that it would not be much effort to obtain one and that he would come back here." Donald then stated, "I will

get them for you," and he then went to the back of the store, opened the safe and two Apollo XII medals were "recovered" (Halikias, A-137-38; Exhs. 5 and 6).

Halikias gave the two Apollo XII medals to Keables, who then asked Anthony Brigandi, "whether he had any other Medallic art at his other store located at 120 West 144th Street" (Keables, A-106-07). Anthony replied that "he thought he may have a few pieces, less than seven or eight" (Keables, A-107). Keables asked for permission to go to the other store and Anthony said, "yes, you may" (Keables, A-107-08). However, on cross-examination, Keables stated that Anthony in reply to Keables' request to go to the other store, stated "Do what you want" (Keables, A-121). Keables also asked Anthony, "if he ever checked or inquired as to the medals you are buying in such quantities from one man?" Anthony replied "that he does not question the honesty of his customers" (Keables, A-133).

Keables left the 45th Street store, and accompanied by Detective Robert went to the Brigandi's 44th Street store (Keables, A-108). After being admitted to the 44th Street store, Keables told Samuel Metterson, a clerk at the store, that he was investigating the loss of Medallic art and that he had received permission from Mr. Brigandi to visit the store (Keables, A-108). He further stated that Metterson could call Mr. Brigandi at the 45th Street store, and ask him if Keables had permission to see the Medallic art in the 44th Street store (Keables, A-108). Metterson gave Keables an Apollo XII medal (Exh. 7) which was displayed in the showcase of the 44th Street store (Keables, A-109). Metterson then made a call to the 45th Street store and

Keables took the phone and apparently spoke to Leaf or Halikias (Keables, A-111, 133-134). Metterson then gave Keables twenty-three other silver medals, which were placed in a canvas bag (Exh. 8). Keables had Ruete come to the store and identify the medals that were given to him by Metterson (Keables, A-111, 134).

## The Court's Decision on the Motion to Suppress

At the conclusion of the hearing on defendants' motion to suppress, Mr. Justice MURTAGH ruled as follows:

> "By order dated September 15, 1971 a hearing was directed with respect to a motion to suppress physical evidence being sought to be used in the prosecution of the indictment herein. The hearing was held before me on January 10, 1972.
>
> "Having heard all of the evidence on the hearing the motion for a suppression of the evidence is in all respects denied.
>
> "The police seized initially the following items:
>
> "1. Dawn of America Medal
>
> "2. Apollo 13 commemorative medal
>
> "3. George Ross of Pennsylvania medal
>
> "4. Lincoln Heritage Trial medal
>
> "5. Two manila boxes containing Legend Medallic Art Company
>
> "As stated by one of the defendants, Donald Brigandi, in an affidavit dated April 23, 1971, submitted in support of the motion to suppress, the items were seized in a store referred to as 'our store at premises 103 West 45th Street, New York City, New York.'

The above items were seized, being in plain view of the arresting officers, and as an incident to the arrest of the defendants Anthony Brigandi and Donald Brigandi. Accordingly, the seizures were legal. The seizures were in complete conformity with the dictates of *Chimel* v. *California,* 395 U.S. 752 (1969).

"Other items of physical evidence were seized at said premises and at premises refrered to in Donald Brigandi's affidavit as 'our other store located at 120 West 44th Street, New York City, New York.' These items were seized with the consent of the defendant Anthony Brigandi. The seizures were legal under the doctrine stated in *Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971); *U.S.* v. *Smith,* 308 F.2d 657 (1962), *cert. den.* 372 U.S. 906; *U.S.* v. *Bracer,* 342 F.2d 522 (1965), *cert. den.* 382 U.S. 954.

"It is evident that the defendant Anthony Brigandi consented to show the items to the officers in order to convey the appearance that he had nothing to hide. There is no evidence of an attempt by the officers to coerce or dominate the defendants. To hold that the conduct of the police was an illegal search and seizure

## The Evidence at Trial

The Medallic Art Company located at 325 East 45th Street in New York County was commissioned by the Presidential Art Company to manufacture an Apollo moon landing series of medals (498).* Medallic manufactured 6100 unserialized Apollo medals and shipped 5,800 of the medals to Presidential while keeping 300 of the silver Apollo XII in its shipping room for inventory purposes (542). In March 1970, Presidential sent 531 unserialized Apollo XII medals back to Medallic because of their imperfect condi-

* Refers to the minutes of the trial.

tion (503, 542). Meanwhile, Presidential had advertised in the major numismatic publications and local newspapers that the silver Apollo XII medals would be serialized and would sell for $35 per medal (498). The wholesale price of the medals was $26 and the metallic value of the medal was approximately $8 (501).

From April, 1970 to September 1970, Mark Adrian a 16 year-old boy, who was a receiving clerk and engraver at Medallic and Raymond Rivera, who worked in the shipping department at Medallic, stole hundreds of unserialized Apollo XII medals bearing the name "Medallic Art Company" and sold them to the petitioners for less than the issue price, and for less than their silver content value. Expert testimony established that serialization is the hallmark of modern silver medals and that its absence on these medals would have conclusively indicated to someone in the trade that they did not come out of the general market and that an error or mistake was present (A-454, 495). However, the petitioners never asked either Adrian or Rivera for their names or addresses, and never even inquired as to where they had gotten the medals, or whether they had owner or parental permission to sell them (A-204, 285-87). This conduct on the part of petitioners was unusual in the extreme, especially because expert testimony further established that it was common business practice to require parental consent before engaging in transactions with minors, and to require even adults to produce identification before purchasing articles from them (A-461, 464, 466, 494, 614, 631).

Finally, Anthony continued to buy medals from Rivera, who had been introduced to him as Adrian's partner, even

after Adrian had told him that he worked for Medallic and could obtain an additional $10,000 worth of medals, to which Anthony replied "that he could handle it" (A-214-15). At this point, Adrian had already told Anthony that "he could get busted for keeping the medals in a safe" (A-214-15).

## ARGUMENT

### POINT I

**Petitioners freely and voluntarily consented to a seizure of two medals from their 45th Street store and twenty-four medals from their 44th Street store.**

Petitioners erroneously argue that Donald's surrender of two medals to Detective Halikias and Anthony's reply to Detective Keables's request for permission to go to their 44th Street store to recover other pieces of Medallic Art did not constitute consent.

The uncontradicted testimony of Detective Halikias clearly supports the State courts' findings of consent by Donald. After being placed under arrest and advised of his rights under *"Miranda"* (A-105, 139), Donald was asked by Halikias, "if there were any other medals in the shop," and he replied "there may be one or two, or three pieces in the back" (A-137). Donald then asked Halikias "if he had a search warrant, and Halikias responded "that it would not be much effort to obtain one and that he would come back here" (A-137). Donald then stated "I will get them for you." He then went to the back of the store, opened a safe and two medals were recovered (A-137-8).

Donald freely cooperated with Detective Halikias and there is no evidence to suggest that Donald was subjected to any form of coercion, duress or pressure into opening the safe. There was no suggestion that he could not refuse. *United States* v. *Harris*, 453 F. 2d 1317 (8th Cir. 1972). To be sure, appellant was in custody at the time Halikias asked him about other medals in the store, but the fact that an individual is under arrest does not of itself render involuntary actions or words of consent. *United States* v. *Elrod*, 441 F.2d 353 (5th Cir. 1971); *United States* v. *Goosbey*, 419 F.2d 818 (6th Cir. 1970); *United States ex rel. Lungergan* v. *McMann*, 417 F.2d 519 (2d Cir. 1969); *United States* v. *Jordan*, 399 F.2d 610 (2d Cir.), *cert. denied*, 393 U.S. 1005 (1968); *Seay* v. *United States*, 380 F.2d 358 (5th Cir), *cert. denied*, 389 U.S. 1047 (1967); *United States* v. *Bracer*, 342 F.2d 522 (2d Cir.), *cert. denied*, 382 U.S. 594 (1965); *United States* v. *Smith*, 308 F.2d 557 (2d Cir.), *cert. denied*, 372 U.S. 908 (1962); *United States ex rel. Dunham* v. *Quinlan*, 327 F. Supp. 115 (S.D.N.Y. 1971); *United States* v. *Strouth*, 311 F. Supp. 1088 (E.D. Tenn. 1970).

Moreover, Halikias's statement that he could get a search warrant and return to the store was not coercion. A defendant may not assert the illegality of a search made with consent, even if given in response to a threat to procure a search warrant. *United States* v. *Myers*, 378 F.2d 398 (3d Cir. 1967), *cert. denied*, 396 U.S. 847 (1969) (After arrest, agents told defendant that they believed his premises contained certain evidence and that they were going to get a search warrant in order to look for it, defendant responded "that will not be necessary, you can search for anything you want as long as you put everything back in place where it was." Defendant then handed a detective the keys to

his house.); *United States* v. *Bracer, supra* (After arrest, Bracer informed agents that they would have to obtain a search warrant for his apartment. After agents told him that they were going to get one, he voluntarily took them to his apartment where additional heroin was found); *Gatterdam* v. *United States,* 5 F.2d 673 (6th Cir. 1925) (Agent stated to defendant, "you might as well consent, because if you don't, we will go and get a search warrant"); *Hamilton* v. *North Carolina,* 260 F.Supp. 632 (E.D.N.C. 1966) (Police told defendant "that he did not have a search warrant with him but that he could get one." Defendant replied "that there was no need for that, you can search my car." Defendant then handed key of car to the police officer.) *Simons* v. *Bomar,* 230 F. Supp. 226 (M.D. Tenn. 1964). (Fair consent to search was given in response to announced intention to leave and secure a warrant if permission was denied); *cf. O'Toole* v. *Scafati,* 386 F.2d 160 (1st Cir.), *cert. denied,* 390 U.S. 985 (1967); *Robbins* v. *MacKenzie,* 364 F.2d 45 (1st Cir.), *cert. denied,* 385 U.S. 913 (1966).

Furthermore, Donald did more than consent to the search, he went to the safe and delivered up the two coins himself. Voluntary assistance given by a defendant is strong evidence of consent. *United States* v. *Jimminez-Badilla,* 434 F.2d 170 (9th Cir. 1970) (Defendant volunteered information that additional heroin was in the kitchen alcove area); *Keegan* v. *United States,* 385 F.2d 260 (9th Cir. 1967), *cert. denied,* 391 U.S. 967 (1968) (Defendant voluntarily tended credit card belonging to owner to deputy sheriff); *Rogers* v. *United States,* 396 F.2d 944 (10th Cir. 1966), *cert. denied, Ferguson* v. *U.S.,* 388 U.S. 922 (1967)

(After arrest and after being advised of his rights, defendant voluntarily revealed the location of narcotics in his home and accompanied the officers for the purpose of assisting them); *United States* v. *Smith, supra* (Defendant, after arrest took agents to apartment of another, showed them suitcase which she stated contained heroin and handed agent a key with which to open the suitcase); *United States* v. *Macleod,* 207 F.2d 853 (7th Cir. 1953) (Defendant assisted agents in removing a lock from a foot locker and also giving agents a hand printing press); *United States* v. *Rundle,* 274 F. Supp. 364 (E.D. Pa. 1961), *aff'd,* 393 F.2d 635 (3d Cir. 1965) (Defendant after detention at station house gave officers keys to unlock his car also assisted officers in removing the hubcaps to the car); *United States* v. *Tchack,* 296 F. Supp. 500 (S.D.N.Y. 1969) (Defendant assisted inspectors in removing merchandise from book shelves).

Petitioners further allege that Anthony did not "freely and unequivocally" give his consent for Keables to visit the 44th Street store and recover the Medallic art found there. This claim is also without merit. Anthony's consent for Keables to go to the 44th Street store was intelligent and voluntary. After Halikias gave Keables the two medals he recovered from Donald, Keables asked Anthony "if he had any pieces of Medallic art at his 44th Street store" (A-106-107). Anthony responded 'that he thought he may have a few pieces, less than seven or eight" (A-107). Keables asked for permission to go to the store and Anthony replied "yes, you may" (A-107-108). However, on cross-examination, Keables stated that Anthony, in reply to his request, stated "Do what you want." In

either circumstance his consent was unequivocal and intelligently given. "Appellant need not have a positive desire that the search be conducted in order for his consent to be voluntary." *United States* v. *Gaines,* 441 F.2d 1123 (2d Cir. 1971); *United States* v. *Thompson,* 356 F.2d 216 (2d Cir. 1965); *United States* v. *Vihotti,* 323 F.Supp. 425 (S.D. N.Y. 1971). Detective Keables requested permission to search the other store; he did not instruct Anthony to grant him such permission. The record is devoid of any evidence of displeasure on Anthony's part. There was no evidence to indicate coercion or trickery by the police and there was nothing inherently coercive about the circumstances surrounding the request to go to the other store. *People* v. *Rubino,* 35 A.D. 2d 530 (2d Dept. 1970). There was no evidence of exhaustive questioning or persistent demands, nor was Anthony's consent given only after repeated refusals. *United States* v. *Thompson, supra*; *Parker* v. *United States,* 315 F.2d 319 (5th Cir. 1963). Anthony did not merely acquiesce to police demands but voluntarily admitted to Keables that he possibly had "seven or eight pieces" of Medallic art in his other store. *United States* v. *Jimminez-Badilla, supra*; *Rogers* v. *United States, supra.* Anthony was under no compulsion when he told the officers about these other medals. *United States* v. *Smith, supra.*

Anthony is not a poor, illiterate, uninformed person, but a proprietor of a business enterprise, and he was capable of understanding the consequences of such consent, *viz.,* that Keables would go to the 4th Street store and seize the other items of Medallic art, that Anthony said were there. *United States* v. *Coleman,* 322 F. Supp. 550 (E.D. Penn. 1971); *Application of Fried,* 60 F. Supp. 961 (S.D.N.Y. 1946); *cf. People* v. *Post,* 23 N.Y.2d 157 (1968).

Moreover, Keables, while in the 44th Street store, told Mr. Metterson, the clerk at the store, that he had permission to see the Medallic art, and that he could call Anthony to verify this (A-111). Mr. Metterson called and then handed Keables 23 medals (A-111). Despite the obvious opportunity for Anthony to object to Metterson's giving the medals to Keables, no objection was made. Furthermore, the officers made no search or seizure in the store beyond the seizure which Anthony agreed could be made. *United States* v. *Smith, supra.*

Finally, the petitioners' consent to the search of their stores which led to the discovery of evidence against them does not itself render their consent ineffectual. *United States ex rel. Lungerman* v. *McMann, supra*; *United States* v. *Curiale,* 414 F.2d 744 (2d Cir.), *cert. denied,* 96 U.S. 959 (1969); *United States* v. *Gorman,* 355 F.2d 151 (2d Cir. 1965), *cert. denied,* 384 U.S. 1024 (1966); *United States ex rel. Dunham* v. *Quinlan, supra. But see, Channel* v. *United States,* 285 F.2d 217 (9th Cir. 1962); *Judd* v. *United States,* 190 F.2d 649 (D.C. Cir. 1951). As the court in *Gorman* stated:

> "Where, as here, no force or deception was either used or threatened, we see no reason why a court should disregard a suspect's expression of consent simply because efficient and lawful investigation and his own attempt to avoid apprehension had produced a situation where he could hardly avoid giving it." (355 F.2d at 159)

Petitioners also claim that the police had ample time to obtain a warrant and the circumstances did not justify making the search without a warrant. Petitioners are wrong. Given the facts and circumstances of this case a search warrant was not needed. Petitioners' reliance on *Coolidge*

v. *New Hampshire*, 403 U.S. 443 (1971), is misplaced. In *Coolidge*, the police "had ample opportunity to obtain a valid warrant, they knew the automobile's exact description and location well in advance, and they intended to seize the automobile when they came upon Coolidge's property." Here, however, Detectives Halikias and Keables, not knowing the exact description or location of any coins, entered petitioners' store for the purpose of continuing their investigation, not with the intention of making a search. However, once inside the store, Keables was fortuitous in seeing four Medallic coins being openly displayed in a showcase. Since his initial entry into the store to investigate was justified, and since the search was not anticipated, and because he inadvertently came across the four pieces of Medallic Art, which were in open view, Keables was entitled to seize them, absent a search warrant. *Coolidge* v. *New Hampshire, supra* at 466. "Any requirement that the officers had to first secure a warrant before seizing the medals would not have been practicable because the petitioners were alerted and the evidence could have been easily destroyed or have been removed. *Cf. Carroll* v. *United States*, 267 U.S. 132 (1924).

Furthermore, the record also reflects that the seizure of the twenty-four coins from petitioners' 44th Street store was not anticipated. Detective Keables had to ask Anthony whether there were other Medallic coins at his other store, and once Anthony's consent was obtained, Keables was entitled to seize the medals absent a search warrant. *Schnechloth* v. *Bustamante*, —— U.S. ——, 36 L.Ed. 2nd 854 (1973); *Vale* v. *Louisiana*, 349 U.S. 30 (1969); *Frazier* v. *Cupp*, 394 U.S. 731 (1969); *Katz* v. *United States*, 389 U.S. 347 (1962); *Zap* v. *United States*, 328 U.S. 624 (1954), *rev'd on other*

*grounds*, 330 U.S. 800 (1947); *United States* v. *Nelson*, 459 F.2d 884 (6th Cir. 1972); *Anderson* v. *United States*, 399 F.2d 753 (10th Cir. 1960); *United States* v. *Martin*, 176 F.Supp. 262 (S.D.N.Y. 1959).

## POINT II

**Petitioners were not denied due process by the court's denial of their request for the tape recording at the conclusion of the suppression hearing.**

Petitioners argue that the court's denial of their request at the conclusion of the suppression hearing for the tape recording made when Rivera entered their store on November 18 was prejudicial error. They are wrong.

At the conclusion of the suppression hearing, petitioners made a request for the tape recordings (A-154). The court stated "that these are motions that should be received prior to trial. The defendants' constitutional rights have not been infringed upon. This is clearly not a wiretap, or an eavesdropping—the District Attorney is under a continuing obligation to furnish you with any exculpatory evidence, but I assure that when he is not doing this he feels that he does not have any" (A-151). The prosecution was not suppressing any evidence favorable to the appellants *Brady* v. *Maryland*, 373 U.S. 83 (1963); *accord*, *Moore* v. *Illinois*, 408 U.S. 786, 794 (1972). The contents of the tape recording were not material or relevant to any issues raised at the suppression hearing or related to any testimony of the witnesses at the hearing. The People did not play the recording at the hearing and placed no reliance upon it, in sustaining the seizure of the medallions. Detective Keables did not even listen to the recording made by Rivera prior to his entry into the store.

## Conclusion

***The petition for a writ of certiorari should be denied.***

Respectfully submitted,

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